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**DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection**

DEPARTMENT OF THE TREASURY

19 CFR Part 12, 163, and 178

USCBP-2012-0022

CBP Dec. 13-10

RIN 1515-AD85

**Prohibitions and Conditions on the Importation and Exportation of Rough
Diamonds**

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security;
Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations to set forth the prohibitions and conditions that are applicable to the importation and exportation of rough diamonds pursuant to the Clean Diamond Trade Act, as implemented by the President in Executive Order 13312 dated July 29, 2003, and the Rough Diamonds Control Regulations (RDCR) issued by the Office of Foreign Assets Control of the U.S. Department of the Treasury. In addition to restating pertinent provisions of the RDCR, the amendments clarify that any U.S. person exporting from, or importing to, the United States a shipment of rough diamonds must retain for a period of at least five years a copy of the Kimberley Process Certificate that currently must

accompany such shipments and make the copy available for inspection when requested by CBP. The document also requires formal entry for shipments of rough diamonds.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Brian Barulich, Regulations and Rulings, Office of International Trade, (202) 325-0059.

SUPPLEMENTARY INFORMATION:

Background

I. Purpose

In response to the role played by the illicit trade in diamonds in fueling conflict and human rights violations in certain areas of the world, and to differentiate between the trade in conflict diamonds and the trade in legitimate diamonds, the United States and numerous other countries announced in the Interlaken Declaration of November 5, 2002, the launch of the Kimberley Process Certification Scheme (KPCS) for rough diamonds. Under the KPCS, participating countries prohibit the importation of rough diamonds from, or the exportation of rough diamonds to, a non-participant and require that shipments of rough diamonds from or to a participating country be controlled through the KPCS. The U.S. Secretary of State is responsible for providing an up-to-date listing of all participants in the KPCS. Swaziland was added to the list of participants in the KPCS and the addition was announced in the **Federal Register** (77 FR 27831) on May 11, 2012, and Cambodia, Cameroon, Kazakhstan, and Panama were added to the list of participants and announced in the **Federal Register** (78 FR 12135) on February 21, 2013.

II. Clean Diamond Trade Act and Executive Order

The Clean Diamond Trade Act (the Act), Public Law 108–19, 117 Stat. 631 (19 U.S.C. 3901 et seq.), was enacted on April 25, 2003. Section 4 of the Act requires the President, subject to certain waiver authorities, to prohibit the importation into, or exportation from, the United States of any rough diamond, from whatever source, that has not been controlled through the KPCS. Section 5(a) of the Act authorizes the President to issue such proclamations, regulations, licenses, and orders, and conduct such investigations, as may be necessary to carry out the Act. Section 5(b) of the Act sets forth the general recordkeeping requirements that apply to persons seeking to export from or import into the United States any rough diamonds. Section 5(b) specifically provides that any United States person seeking to export from or import into the United States any rough diamonds shall keep a full record of, in the form of reports or otherwise, complete information relating to any act or transaction to which any prohibition imposed under section 4(a) of the Act applies. Section 5(b) further provides that such person may be required to furnish such information under oath, including the production of books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person. In addition to CBP having the authority to apply the customs laws to import violations of the Act, section 8 authorizes CBP and U.S. Immigration and Customs Enforcement (ICE), as appropriate, to assess penalties and enforce the export laws and regulations. See also 15 CFR 30.70. Therefore, pursuant to section 8, CBP may assess penalties for export recordkeeping violations. However, CBP notes that the penalties issued pursuant to section 19 U.S.C. 1509(g) for failure to comply with 19 U.S.C. 1509(a)(1)(A) do not apply to recordkeeping requirements for export documents.

On July 29, 2003, the President issued Executive Order 13312 (published in the **Federal Register** (68 FR 45151) on July 31, 2003) to implement the Act, effective for rough diamonds imported into, or exported from, the United States on or after July 30, 2003.

III. Existing Regulations and Requirements

CBP notes that persons importing into or exporting from the United States a shipment of rough diamonds must comply with the requirements of CBP, the Office of Foreign Assets Control (OFAC) of the Department of the Treasury (31 CFR part 592), and the U.S. Census Bureau (15 CFR part 30). Such persons should also be aware of any relevant Internet postings, guidance documents, or **Federal Register** notices issued by the U.S. Department of State. Also, it should be noted that ICE can take enforcement action on illegally imported and exported rough diamonds. See 19 U.S.C. 3907.

Examples of the other government requirements are provided below. OFAC, acting pursuant to Executive Order 13312 and other authorities, published in the **Federal Register** (69 FR 56936) the Rough Diamonds Control Regulations (RDCR) (31 CFR part 592) on September 23, 2004. To be controlled through the KPCS, the RDCR require that all shipments of rough diamonds imported into, or exported from, the United States must be accompanied by an original Kimberley Process Certificate. See 31 CFR 592.301(a)(1). The RDCR also require that all importers and exporters of rough diamonds file an annual report with the U.S. Department of State regarding their import and/or export activity and stockpile information. See 31 CFR 592.502.

The U.S. Census Bureau issued notices on December 12, 2005, and April 3, 2007, respectively entitled “Notice of Request for Faxed Submission of Kimberley Process Certificates” and “Revised Notice of Request for Faxed Submission of Kimberley Process Certificates,” requiring importers, brokers, and parties involved in the export of rough diamonds to immediately fax their Kimberley Process Certificates (including voided certificates) to the U.S. Census Bureau upon clearance of their shipments into the commerce of the United States by CBP or upon export of their shipments from the United States, as applicable.

On August 15, 2012, CBP published a proposed rule in the **Federal Register** (77 FR 48918) proposing to amend title 19 of the Code of Federal Regulations (19 CFR) to restate pertinent provisions of the RDCR issued by OFAC. The document also proposed to make amendments to clarify that any U.S. person exporting from or importing into the United States a shipment of rough diamonds must retain for a period of at least five years a copy of the Kimberley Process Certificate that currently must accompany such shipments and make the copy available for inspection when requested by CBP. CBP solicited public comments on the proposed rule.

Discussion of Comments

Two commenters responded to the solicitation of public comments in the proposed rule. The comments are discussed below.

Comment:

One commenter applauded the purpose of the Clean Diamond Trade Act but stated that it has not been effective in helping people determine whether they are purchasing “blood” diamonds.

CBP Response:

The Clean Diamond Trade Act implements the Kimberley Process Certification Scheme (KPCS) for rough diamonds. The KPCS is a process, based on international cooperation and on the commitment of the entire supply chain, to prevent the importation, or exportation, of conflict diamonds. One purpose of this rulemaking is to make the Clean Diamond Trade Act as effective as possible.

Comment:

One commenter questioned the necessity of this proposed rule given the existing U.S. Census Bureau regulations (15 CFR part 30) and the OFAC regulations (31 CFR part 592) on rough diamonds, section 161.2 of the CBP regulations (19 CFR 161.2), the Clean Diamond Trade Act (19 U.S.C. 3901 et seq.), section 127.4 of the U.S. Department of State regulations (22 CFR 127.4), and section 758.7 of the U.S. Export Administration regulations (15 CFR 758.7). The commenter also noted two CBP rulings and asserted that through these rulings, CBP is instructing the public to mount rough diamonds to escape regulatory controls. Finally, the commenter requested information on the amount of time and money that was spent to develop the proposed rulemaking.

CBP Response:

While some of the proposed amendments restate the pertinent provisions of the RDCR and cross-reference other agency regulations related to rough diamonds (e.g., 15 CFR part 30), CBP has made substantive changes to its regulations through the other

proposed amendments. For example, the proposed amendments clarify that any U.S. person exporting from or importing into the United States a shipment of rough diamonds must retain for a period of at least five years a copy of the Kimberley Process Certificate that currently must accompany such shipments and make the copy available for inspection when requested by CBP. CBP also proposed to amend its current regulations to require formal entry for shipments of rough diamonds pursuant to the authority provided in 19 U.S.C. 1484 and 1498(a)(1)(B). The restatements of the other agency regulations and the cross-references are made for the convenience of the importing public who use the CBP regulations as a resource.

The particular existing regulations cited by the commenter do not affect the necessity of the amendments made in this document. Specifically, section 127.4 of title 22 of the CFR (22 CFR 127.4), is not directly related to the importation or exportation of rough diamonds as it relates to defense articles, technical data, or defense services; section 161.2 of title 19 of the CFR (19 CFR 161.2) states that CBP enforces the laws of some other government agencies and provides examples of those agencies; and the Department of Commerce regulation, section 758.7 of title 15 of the CFR (15 CFR 758.7), requires, in relevant part, that CBP take appropriate action to comply with the Export Administration Regulations.

CBP also disagrees with the commenter's description of CBP administrative rulings, New York Ruling Letter (NY) N018792 and Headquarters Ruling Letter (HQ) H173035. CBP notes that HQ H173035 modified NY N018792 and notification of the modification was published in the Customs Bulletin, Vol. 46, No. 46, on November 7, 2012 after a notice of the proposed action was published in the Customs Bulletin, Vol. 46, No. 13, on March 21, 2012. In its modified ruling, CBP clarified that jewelry set with tumbled diamonds imported from Zambia are not rough diamonds and therefore are not subject to the KPCS and are not prohibited from importation under the U.S. Clean Diamond Trade Act (19 U.S.C. 3901); however, CBP noted that loose tumbled diamonds from Zambia are not admissible into the United States because tumbled diamonds are considered rough and Zambia is not a member of the KPCS. Please note that rulings are binding on the ruling requester and are tailored to the specific facts and circumstances of the particular case at issue.

Conclusion

After review of the comments and further consideration, CBP has decided to adopt as final the proposed rule published in the **Federal Register** (77 FR 48918) on August 15, 2012.

EXECUTIVE ORDER 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and

benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed this regulation.

This rule increases CBP’s ability to verify whether importations or exportations of rough diamonds are in compliance with the KPCS. OFAC published the RDCR requiring the ultimate consignee to retain the original of the Kimberley Process Certificate. The amendments clarify that any U.S. person exporting from or importing into the United States a shipment of rough diamonds must retain a copy of the Kimberley Process Certificate for a period of five years and make this copy available for inspection at the request of CBP or face penalties pursuant to 19 U.S.C. 1509 or 3907. CBP believes the costs of retaining a copy of the Kimberley Process Certificate for five years and producing the copy to CBP upon request to be negligible.

REGULATORY FLEXIBILITY ACT

This section examines the impact of the rule on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit

organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

CBP has considered the impact of this rule on small entities. As discussed in the NPRM, this rule clarifies that any U.S. person exporting from or importing into the United States a shipment of rough diamonds must retain a copy of the Kimberley Process Certificate for a period of five years and make this copy available for inspection at the request of CBP or face penalties, that may be greater than \$500 (in 1980 dollars), pursuant to 19 U.S.C. 1509 or 3907. CBP believes the costs of retaining a copy of the Kimberley Process Certificate for five years and providing the copy to CBP upon request to be negligible. Additionally, as discussed in the NPRM, CBP subject matter experts do not believe this rule will increase noncompliance with the KPCS for small entities. During the comment period of the NPRM, CBP did not receive any comments that would amend these conclusions. Thus, CBP certifies that this rule will not have a significant impact on a substantial number of small entities.

PAPERWORK REDUCTION ACT

Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and an individual is not required to respond to, a collection of information unless it displays a valid OMB control number. The collections of information contained in these regulations are provided for by OMB control number 1505–0198, to cover the requirements concerning CBP Form 7501, and by OMB control number 1651–0076, to cover the recordkeeping requirement.

SIGNING AUTHORITY

This document is being issued in accordance with § 0.1(a)(1) of the CBP

Regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 12

Customs duties and inspection, Economic sanctions, Entry of merchandise, Foreign assets control, Exports, Imports, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Sanctions.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Exports, Imports, Penalties, Reporting and recordkeeping requirements.

19 CFR Part 178

Administrative practice and procedure, Imports, Reporting and recordkeeping requirement.

Amendments to the CPB Regulations

For the reasons set forth above, parts 12, 163, and 178 of title 19 of the Code of Federal Regulations (19 CFR parts 12, 163, and 178) are amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12, CBP regulations, continues, and a new specific authority citation for § 12.152 is added, to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff

Schedule of the United States (HTSUS)), 1624.

* * * * *

Section 12.152 also issued under 19 U.S.C. 1484, 1498; the Clean Diamond Trade Act (Pub. L. 108–19, 117 Stat. 631 (19 U.S.C. 3901 et seq.)); Executive Order 13312 dated July 29, 2003.

2. Section 12.152 is added to read as follows:

§ 12.152 Prohibitions and conditions on the importation and exportation of rough diamonds.

(a) General. The Clean Diamond Trade Act (Pub. L. 108–19) requires the President, subject to certain waiver authorities, to prohibit the importation into, or exportation from, the United States, of any rough diamond, from whatever source, that has not been controlled through the Kimberley Process Certification Scheme. By Executive Order 13312 dated July 29, 2003, published in the Federal Register (68 FR 45151) on July 31, 2003, the President implemented the Clean Diamond Trade Act, effective for rough diamonds imported into, or exported from, the United States on or after July 30, 2003. Pursuant to Executive Order 13312 and other authorities, the Office of Foreign Assets Control (OFAC), Department of the Treasury, promulgated the Rough Diamonds Control Regulations (see 31 CFR part 592). Any persons importing into or exporting from the United States a shipment of rough diamonds must comply with the requirements of CBP, OFAC, and the U.S. Census Bureau (15 CFR part 30).

(b) Definitions. For purposes of this section, the following definitions apply:

(1) Controlled through the Kimberley Process Certification Scheme. “Controlled through the Kimberley Process Certification Scheme” means meeting the requirements set forth in 31 CFR 592.301;

(2) Kimberley Process Certificate. “Kimberley Process Certificate” means a forgery resistant document that meets the minimum requirements listed in Annex I of the Kimberley Process Certification Scheme, as well as the requirements listed in 31 CFR 592.307;

(3) Rough diamond. “Rough diamond” means any diamond that is unworked or simply sawn, cleaved, or bruted and classifiable under subheading 7102.10, 7102.21, or 7102.31 of the Harmonized Tariff Schedule of the United States;

(4) United States. “United States”, when used in the geographic sense, means the several states, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(5) United States person. “United States person” means:

(i) Any United States citizen or any alien admitted for permanent residence into the United States;

(ii) Any entity organized under the laws of the United States or any jurisdiction within the United States (including its foreign branches); and

(iii) Any person in the United States.

(c) Original Kimberley Process Certificate. A shipment of rough diamonds imported into, or exported from, the United States must be accompanied by an original Kimberley Process Certificate.

(d) Formal Entry Required. Formal entry is required when importing a

shipment of rough diamonds. Formal entry procedures are prescribed in part 142 of this chapter.

(e) Report of Kimberley Process Certificate Unique Identifying Number.

Customs brokers, importers, and filers making entry of a shipment of rough diamonds must either submit through CBP's Automated Broker Interface (ABI) system the unique identifying number of the Kimberley Process Certificate accompanying the shipment or, for non-ABI entries, indicate the certificate number on the CBP Form 7501, Entry Summary, on each applicable line item.

(f) Maintenance of Kimberley Process Certificate. (1) Ultimate consignee. The ultimate consignee identified on the CBP Form 7501, Entry Summary, or its electronic equivalent filed with CBP in connection with an importation of rough diamonds must retain the original Kimberley Process Certificate for a period of at least five years from the date of importation and must make the certificate available for examination at the request of CBP.

(2) Importer. The U.S. person that imports into the United States a shipment of rough diamonds must retain a copy of the Kimberley Process Certificate accompanying the shipment for a period of at least five years from the date of importation and must make the copy available for examination at the request of CBP.

(3) Exporter. The U.S. person that exports from the United States a shipment of rough diamonds must retain a copy of the Kimberley Process Certificate accompanying the shipment for a period of at least five years from the date of exportation and must make the copy available for examination at the request of CBP.

PART 163—RECORDKEEPING

3. The specific authority citation for part 163 is revised and the general authority citation continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

* * * * *

[Section 163.2](#) also issued under 19 U.S.C. 3904, 3907.

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4. In § 163.2, paragraph (c) is revised to read as follows:

§ 163.2 Persons required to maintain records.

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(c) Recordkeeping required for certain exporters. (1) NAFTA. Any person who exports goods to Canada or Mexico for which a Certificate of Origin was completed and signed pursuant to the North American Free Trade Agreement must also maintain records in accordance with part 181 of this chapter.

(2) Kimberley Process Certification Scheme. Any U.S. person (see definition in § 12.152(b)(5)) who exports from the United States any rough diamonds must retain a copy of the Kimberley Process Certificate accompanying each shipment for a period of at least five years from the date of exportation. See 19 CFR 12.152(f)(3). Any U.S. person who exports from the United States any rough diamonds and does not keep records in this time frame may be subject to penalties under 19 U.S.C. 3907.

5. The Appendix to part 163 is amended by adding a new listing under section IV in numerical order to read as follows:

Appendix to Part 163—Interim (a)(1)(A) List

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IV. * * *

§ 12.152 Kimberley Process Certificate for rough diamonds.

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PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

6. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624, 44 U.S.C. 3501 et seq.

7. Section 178.2 is amended by adding a new listing to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR Section	Description	OMB Control No.
* * *	* * *	* * *
§ 12.152.	Certificate and recordkeeping requirements for the entry of rough diamonds.	1505-0198 and 1651-0076
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Thomas S. Winkowski

Deputy Commissioner
Performing the duties of the Commissioner of U.S.
Customs and Border Protection

Approved: June 28, 2013

Timothy E. Skud

Deputy Assistant Secretary of the Treasury

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